

ASSEMBLY BILL

No. 884

Introduced by Assembly Member Dymally

February 22, 2007

An act to amend Sections 50199.5, 50199.8, 50199.10, 50199.14, and 50199.20, of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 884, as introduced, Dymally. Low-income housing tax credit allocation program.

Existing law relating to the program established to provide low-income tax credits to stimulate the production and rehabilitation of shelter for lower individuals and families authorizes, among other things, the California Tax Credit Allocation Committee to set aside up to 2% of the available tax credit for small developments as determined by the committee.

This bill would increase that amount from 2% to 5% and apply that new percentage to developments of less than 35 units. This bill would also include specified additional appointments to the committee, require the allocation of by a lottery system and on the basis of other criterion, authorize a joint venture with a partner in the case the applicant for the credit is a developer, and authorize allocations to urban infill and neighborhood blight projects, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50199.5 of the Health and Safety Code
 2 is amended to read:

3 50199.5. The Legislature hereby finds and declares all of the
 4 following:

5 (a) Section 42 of the Internal Revenue Code has been modified
 6 by the federal Revenue Reconciliation Act of 1989 to require that
 7 the housing credit agency establish a qualified allocation plan
 8 which sets forth selection criteria to be used to determine housing
 9 priorities that are appropriate to local conditions, and which gives
 10 preference in allocating housing credit dollar amounts to projects
 11 serving the lowest income tenants and projects obligated to serve
 12 low-income tenants for the longest periods.

13 (b) The qualified allocation plan shall encompass and
 14 incorporate the criteria and requirements set forth in Section
 15 50199.14.

16 (c) Certain provisions of the California Tax Credit should be
 17 modified to conform to the changes to the federal low-income
 18 housing tax credit.

19 (d) The Tax Credit Allocation Committee should, to the extent
 20 possible, allocate the California low-income housing tax credit
 21 using the same criteria and requirements used in allocating the
 22 federal tax credit.

23 (e) The public interest is best served by the dissemination of
 24 information regarding the low-income housing tax credit program
 25 to all areas of the state, with special efforts in rural *and urban* areas
 26 *and for projects sponsored by community-based nonprofit*
 27 *organizations*, to ensure greater knowledge and participation in
 28 the program.

29 SEC. 2. Section 50199.8 of the Health and Safety Code is
 30 amended to read:

31 50199.8. The committee is composed of the Governor, or in
 32 the Governor's absence, the Director of Finance, the Controller,
 33 ~~and the Treasurer~~ *one representative appointed by the Senate*
 34 *Committee on Rules, and one representative appointed by the*
 35 *Speaker of the Assembly.* The Director of Housing and Community
 36 Development, the Executive Director of the California Housing
 37 Finance Agency, and two representatives of local government, one
 38 representative of the counties appointed by the Senate—~~Rules~~

1 ~~Committee~~ *Committee on Rules*, and one representative of the
2 cities appointed by the Speaker of the Assembly shall serve as ex
3 officio, nonvoting members. The Treasurer shall be the chairperson
4 of the committee. The members of the committee shall serve
5 without compensation. A majority of voting members shall be
6 empowered to act for the committee. The committee may employ
7 an executive director to carry out its duties under this chapter. The
8 committee may delegate to the executive director the authority to
9 enter contracts on behalf of the committee.

10 SEC. 3. Section 50199.10 of the Health and Safety Code is
11 amended to read:

12 50199.10. (a) For purposes of allocating low-income housing
13 credits, the committee is hereby designated as this state's only
14 housing credit agency for purposes of Section 42(h) of the federal
15 Internal Revenue Code (26 U.S.C. Sec. 42(h)). The committee
16 shall annually determine and shall allocate the state ceiling in
17 accordance with this chapter and in conformity with federal law.
18 The committee shall determine the housing credit ceiling as soon
19 as possible following the effective date of this chapter and
20 thereafter following the commencement of each calendar year.
21 The committee shall undertake any and all responsibilities of
22 housing credit agencies under Section 42 of Title 26 of the United
23 States Code, including entering into regulatory agreements relating
24 to projects that are granted awards.

25 (b) The committee shall develop and provide application forms
26 for use by housing credit applicants. The committee shall adopt
27 uniform procedures for submission and review of applications of
28 housing credit applicants, including fees to defray the committee's
29 costs in administering this chapter. In the committee's discretion,
30 the fees shall be charged to a housing credit applicant as a condition
31 of submitting an application or as a condition of receiving an
32 allocation or reservation of the state's current or anticipated
33 housing credit ceiling, or both.

34 (c) In addition to allocating the current housing credit ceiling,
35 the committee may reserve a portion of the state's anticipated
36 housing credit ceiling for a subsequent year for a housing credit
37 applicant.

38 (d) As a condition to making an allocation of the housing credit
39 ceiling or a reservation of the anticipated housing credit ceiling
40 for a subsequent year, the committee may require the housing

1 credit applicant receiving the allocation or reservation to deposit
2 with the committee an amount of money as a good-faith
3 undertaking. The committee shall adopt policies for determining
4 when deposits will be required, prescribing procedures for return
5 of deposits, and specifying the circumstances under which the
6 deposits will be forfeited in whole or in part for failure to timely
7 utilize the allocation or reservation provided to the housing credit
8 applicant.

9 (e) (1) The committee may make any allocation or reservation
10 of the state's housing credit ceiling to a housing credit applicant
11 subject to terms and conditions in furtherance of the purposes of
12 this part. The committee may condition an allocation or reservation
13 on the execution of a contract between the housing credit applicant
14 and the committee requiring the housing credit applicant to comply
15 with all the terms of Section 42 of the federal Internal Revenue
16 Code, any applicable state laws, and any additional requirements
17 the committee deems necessary or appropriate to serve the purposes
18 of this chapter, and providing for legal action to obtain specific
19 performance or monetary damages for breach of contract.

20 (2) No allocations or reservations shall be made pursuant to this
21 subdivision with respect to projects that do not meet the
22 requirements of the qualified allocation plan, and no allocations
23 or reservations shall be made in amounts that do not meet the
24 requirements of paragraph (2) of subsection (m) of Section 42 of
25 Title 26 of the United States Code. *Notwithstanding any provision*
26 *of this chapter to the contrary, all credits shall be allocated*
27 *pursuant to the qualified allocation plan as follows:*

28 (A) 50 percent by a lottery system.

29 (B) 50 percent in accordance with criterion established by the
30 committee.

31 SEC. 4. Section 50199.14 of the Health and Safety Code is
32 amended to read:

33 50199.14. (a) The committee shall allocate the housing credit
34 on a regular basis consisting of two or more periods in each
35 calendar year during which applications may be filed and
36 considered. The committee shall establish application filing
37 deadlines, the maximum percentage of federal and state low-income
38 housing tax credit ceiling that may be allocated by the committee
39 in that period, and the approximate date on which allocations shall
40 be made. If the enactment of federal or state law, or the adoption

1 of rules or regulations, or other similar events prevent the use of
2 two allocation periods, the committee may reduce the number of
3 periods and adjust the filing deadlines, maximum percentage of
4 credit allocated, and the allocation dates.

5 (b) The committee shall adopt a qualified allocation plan, as
6 provided in paragraph (1) of subsection (m) of Section 42 of Title
7 26 of the United States Code. In adopting this plan, the committee
8 shall comply with the provisions of subparagraphs (B) and (C) of
9 paragraph (1) of subsection (m) of Section 42 of Title 26 of the
10 United States Code.

11 (c) In order to promote ~~the provision of~~ affordable low-income
12 housing within and throughout the state, the committee shall
13 allocate housing credits in accordance with the qualified allocation
14 plan and regulations, which shall include the following provisions:

15 (1) All housing credit applicants shall demonstrate at the time
16 the application is filed with the committee, that the project meets
17 the following threshold requirements:

18 (A) The housing credit applicant shall demonstrate there is a
19 need and demand for low-income housing in the community or
20 region for which it is proposed.

21 (B) The project's proposed financing, including tax credit
22 proceeds, shall be sufficient to complete the project and that the
23 proposed operating income shall be adequate to operate the project
24 for the extended use period.

25 (C) The project shall have enforceable financing commitments,
26 either construction or permanent financing, for at least 50 percent
27 of the total estimated financing of the project.

28 (D) The housing credit applicant shall have and maintain control
29 of the site for the project.

30 (E) The housing sponsor shall demonstrate that the project
31 complies with all applicable local land use and zoning ordinances.

32 (F) The housing credit applicant shall demonstrate that the
33 project development team has the experience and the financial
34 capacity to ensure project completion and operation for the
35 extended use period. *If the housing credit applicant is a new
36 developer, the housing credit applicant may joint venture with a
37 partner to demonstrate that the project development team has the
38 experience and the financial capacity to ensure project completion
39 and operation for the extended use period.*

1 (G) The housing credit applicant shall demonstrate the amount
2 of tax credit that is necessary for the financial feasibility of the
3 project and its viability as a qualified low-income housing project
4 throughout the extended use period, taking into account operating
5 expenses, supportable debt service, reserves, funds set aside for
6 rental subsidies, and required equity, and a development fee that
7 does not exceed a specified percentage of the eligible basis of the
8 project prior to inclusion of the development fee in the basis, as
9 determined by the committee.

10 (2) The committee shall give a preference to those projects
11 satisfying all of the threshold requirements of paragraph (1) if:

12 (A) The project serves the lowest income tenants at rents
13 affordable to those tenants; and

14 (B) The project is obligated to serve qualified tenants for the
15 longest period.

16 (3) In addition to the provisions of paragraphs (1) and (2) of
17 subdivision (c), the committee shall use the following criteria in
18 allocating housing credits:

19 (A) Projects serving large families in which a substantial
20 number, as defined by the committee, of all residential units are
21 comprised of low-income units with three and more bedrooms.

22 (B) Projects providing single room occupancy units serving
23 very low income tenants.

24 (C) Existing projects that are “at risk of conversion,” as defined
25 by paragraph (4) of subdivision (c) of Section 17058 of the
26 Revenue and Taxation Code.

27 (D) Projects for which a public agency provides direct or indirect
28 long-term financial support for at least 15 percent of the total
29 project development costs or projects for which the owner’s equity
30 constitutes at least 30 percent of the total project development
31 costs.

32 (E) Projects that provide tenant amenities *or services* not
33 generally available to residents of low-income housing projects.

34 (F) *Projects that are urban infill and that eliminate*
35 *neighborhood blight.*

36 (d) For purposes of allocating credits pursuant to this section,
37 the committee shall not give preference to any project by virtue
38 of the date of submission of its application, except to break a tie
39 when two or more of the projects have the same rating.

1 (e) The committee shall allocate credits to a project under this
2 section prior to allocating credit to that project under Sections
3 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

4 (f) The committee shall allocate credits to a project only if the
5 housing sponsor enters into a regulatory agreement that provides
6 for an “extended use period” as defined in subparagraph (D) of
7 paragraph (6) of subsection (h) of Section 42 of the Internal
8 Revenue Code, which shall terminate on the date specified in the
9 regulatory agreement or the date the project is acquired in
10 foreclosure, including any instrument in lieu of foreclosure,
11 whichever occurs first, and subclause (II) of subparagraph (E) of
12 clause (i) of paragraph (6) of subsection (h) of Section 42 shall
13 not apply.

14 SEC. 5. Section 50199.20 of the Health and Safety Code is
15 amended to read:

16 50199.20. (a) Not less than 20 percent of the federal ceiling
17 on low-income housing tax credits shall be set aside for allocation
18 to rural areas as defined in Section 50199.21. Any amount of credit
19 set aside for rural areas remaining after the ranking of credits in
20 the final cycle of any calendar year shall be available for allocation
21 to any eligible project.

22 (b) ~~Up to 2~~ *Not less than 5* percent of the low-income housing
23 tax credit available under this chapter and Sections 12206, 17058,
24 and 23610.5 of the Revenue and Taxation Code may be set aside
25 for small developments *of less than 35 units* as determined by the
26 committee. Any amount of credit set aside for small developments
27 remaining after the ranking of projects in the final cycle of any
28 calendar year shall be available for allocation to any eligible
29 project.

30 (c) *Not less than 15 percent of the federal ceiling on low-income*
31 *housing tax credits shall be set aside for allocation to urban infill*
32 *development areas that eliminate blight. Any amount of the credits*
33 *set aside for urban infill development areas remaining after the*
34 *ranking of credits in the final cycle of any calendar year shall be*
35 *available for allocation to any eligible project.*